

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED AMENDMENTS,

20.2.70 NMAC – Operating Permits, and

20.2.74 NMAC - *Permits - Prevention of Significant Deterioration (PSD)* No. EIB 10-08 (R)

STATEMENT OF REASONS

The New Mexico Environment Department (Department) submits this Statement of Reasons in support of proposed amendments to 20.2.70 NMAC – *Operating Permits* and 20.2.74 NMAC - *Permits - Prevention of Significant Deterioration (PSD)*. The amendments incorporate the U.S. Environmental Protection Agency's (EPA) amendments to the Operating Permit Regulations (also known as "Title V") and PSD regulations to reflect the designation of greenhouse gases as a "regulated air pollutant" under the federal Clean Air Act.

I. STATUTORY AUTHORITY

1. The Environmental Improvement Board (Board) is authorized to adopt the amendments to Part 70. Pursuant to the Air Quality Control Act (AQCA), §74-2-7(A)(2), the Board may adopt regulations for operating permits as provided by the 1990 amendments to the federal Clean Air Act.

2. The Board is authorized to adopt the amendments to Part 74. Pursuant to the AQCA, §74-2-5(B)(1), the Board may adopt regulations "to prevent or abate air pollution...within the geographic area of [its] jurisdiction." Pursuant to the AQCA, §74-2-5(C)(1)(a), the PSD regulations "shall be....at least as stringent as required by the federal act and federal regulations...pertaining to prevention of significant deterioration...."

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2 **II. BASIS AND NEED**

3 3. On June 3, 2010, the EPA amended its regulations for delegated Title V and PSD
4 programs to reflect the designation of greenhouse gases as a regulated air pollutant under the
5 federal Clean Air Act.

6 4. The State of New Mexico, by virtue of its delegation from EPA to administer the
7 Title V and PSD programs, must amend its regulations to reflect the new requirements.

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9 **III. PROPOSED REGULATION**
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11 5. The amendments are technically practicable. The Title V amendments require that
12 new and revised permits contain any requirements already applicable to an affected facility,
13 rather than impose new requirements. The PSD amendments require certain facilities to conduct
14 a Best Available Control Technology (BACT) analysis for greenhouse gases, but this analysis is
15 benchmarked to control technologies currently in place at other facilities.

16 6. The regulation is economically reasonable. If the Board fails to adopt the
17 amendments, EPA will issue a federal implementation plan disapproving the state's Title V and
18 PSD programs, or relevant parts thereof, from the authority of the State of New Mexico, and
19 impose the amendments under the federal Clean Air Act, resulting in a dual permitting program.

20 7. The Title V amendments will be implemented in two phases, or steps. Step 1
21 begins on January 2, 2011, at which time only sources required to have Title V permits for non-
22 greenhouse gas pollutants ("anyway" Title V sources) will be required to address greenhouse
23 gases as part of their Title V permitting. No sources will become major for Title V based solely
24 on greenhouse gas emissions. Title V sources will be required to address any applicable
25 greenhouse gas requirements, and associated monitoring, recordkeeping and reporting

1 requirements, when they apply for, renew, or revise their permits. Step 2 begins on July 1, 2011,
2 at which time sources that do not have Title V permits, but have emissions that equal or exceed
3 the 100 tons of greenhouse gases per year mass-based threshold and equal or exceed the 100,000
4 ton per year CO₂e threshold will be required to obtain a Title V permit.


5 8. The PSD amendments will also be implemented in two steps. In the first step,
6 beginning on January 2, 2011 PSD requirements for greenhouse gases will apply to sources that
7 are already subject to PSD, e.g., have a permit or applied for a permit after January 2, 2011
8 ("anyway" sources) for one or more "regulated new source review pollutants". These existing or
9 newly-constructed sources will be required to conduct a BACT review for greenhouse gas
10 emissions if:

11 (a) the greenhouse gas emissions (or net emissions increase) due to construction or
12 modification, calculated as the sum of greenhouse gases on a mass basis, exceeds a value of 0
13 tons per year, and

14 (b) the greenhouse gas emissions (or net emissions increase) due to construction or
15 modification equals or exceeds a value of 75,000 tons per year of CO₂e.

16 In the second step, beginning on July 1, 2011, any source with the potential to emit
17 100,000 tons per year of CO₂e or more of greenhouse gases will be considered a major source for
18 the purpose of PSD, if they also emit greenhouse gases or another "regulated new source review
19 pollutant" above the existing regulatory thresholds. To determine whether a modification at a
20 major source is subject to PSD review, the net emissions increase of greenhouse gases on a mass
21 basis exceeds 0 tons per year and equals or exceeds 75,000 tons per year CO₂e.

Approved:


Gay Dillingham, Chair

Date: 11-10-10